Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

BERNARD HOPKINS,

Petitioner,

v.

LOU DIBELLA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in exercising a limited sufficiency of the evidence review of the jury's determination that a public figure plaintiff proved constitutional malice by clear and convincing evidence in a defamation claim?

2. Whether the testimony plaintiff-below/respondent, Lou DiBella ("DiBella"), offered was so uncertain, ambiguous and inconsistent with contemporaneous exhibits and admitted facts of record that no reasonable juror could be persuaded clearly and convincingly that defendant-below/petitioner, Bernard Hopkins ("Hopkins"), made false statements with knowledge of their falsity or with a subjective awareness of their probable falsity?

LIST OF PARTIES IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

DiBella and DiBella Entertainment, Inc. ("DiBella Entertainment") were the plaintiffs in the District Court and Hopkins was the defendant. Hopkins cross-appealed on the one claim that was decided adversely to him, which was entered in favor of DiBella only. Thus, DiBella Entertainment is no longer involved in these proceedings.

As Hopkins is an individual, no corporate disclosure statement is required.

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CITATIONS TO THE REPORTS OF THE OPINIONS OF THE COURTS BELOW

The decision of the United States Circuit Court of Appeals that Hopkins seeks to have reviewed is reported as *DiBella v. Hopkins*, 403 F.3d 102 (2d Cir. 2005). The District Court's decision is reported as *DiBella v. Hopkins*, 285 F.Supp. 2d 394 (S.D.N.Y. 2003).

STATEMENT OF THE BASIS FOR JURISDICTION

The Second Circuit entered its decision affirming the judgment of the District Court on April 4, 2005 and denied Hopkins's Petition for Rehearing *En Banc* or Reconsideration by the Panel by Order entered on June 1, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 because Hopkins seeks review of a decision of a Court of Appeals affirming a District Court judgment entered after a trial.

CONSTITUTIONAL PROVISION INVOLVED IN THIS CASE

The First Amendment to the United States Constitution provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. Amend. I.

STATEMENT OF THE CASE

A. Background

Hopkins respectfully petitions for a writ of certiorari to address the longstanding split among and within the Circuit Courts of Appeal on the scope of review of a defendant's challenge to the sufficiency of the evidence of constitutional malice in a public figure defamation action. This issue is presented in a defamation action DiBella, the former Senior Vice-President of HBO responsible for its boxing programming, commenced against Hopkins. DiBella maintained that Hopkins defamed him by claiming in several interviews to have paid DiBella $50,000 to participate in an HBO televised bout with Syd Vanderpool.

In 1988, Hopkins had begun the career that would see him crowned the undisputed Middleweight Champion of the World and set the record for the most consecutive title defenses. However, Hopkins had no meaningful involvement with DiBella until September 1999, when he ironically provided favorable testimony for Hopkins in a litigation with a former promoter. (App. 75.) DiBella testified that he had offered this promoter a multi-fight contract for Hopkins to participate in HBO televised fights – an offer the promoter never conveyed to Hopkins.[1]

When Hopkins subsequently contacted DiBella to explore whether HBO remained interested in a multi-fight agreement, DiBella offered him a several fight deal. (Trial

[1] A multi-fight agreement with HBO is valuable to a boxer because HBO is the premier boxing broadcaster and pays the highest license fees. Having HBO dates enhances a fighter's ability to attract quality opponents.

Trs. 509-10.) During the negotiation of this offer, DiBella told Hopkins that he would be leaving HBO to open DiBella Entertainment, a boxing advisory and television packaging firm. (App. 4.) DiBella steered the negotiations with Hopkins away from a multi-fight contract with HBO and to DiBella providing advisory services to Hopkins once he left HBO. (Trial Trs. 930-33.) DiBella contemplated leaving HBO under terms where he would continue to package fights for HBO and claimed to be able to assure Hopkins "HBO dates." (*Id.*, 1136.)

While DiBella's negotiation of his separation from HBO was dragging on because of differences over key terms, a Light Heavyweight Championship fight between Roy Jones and Thomas Hall was scheduled to be aired on HBO. (App. 4 and 73; Dx 3, 4, 7, 10 and 13-15.)[2] HBO wanted Hopkins to participate in the televised undercard[3] to this bout. (App. 4.) In conveying this offer, DiBella told Hopkins that the Jones/Hall fight would be the first of what were referred to as "DiBella's dates." (Complaint, ¶ 11.) Hopkins jumped at this opportunity, particularly in that his ability to schedule fights had been hampered by his ongoing litigation with the promoter.

On behalf of HBO, DiBella negotiated with the promoter to include Hopkins in the undercard to the Jones/Hall Championship fight while simultaneously negotiating the amount of the purse Hopkins would receive. On April 11, 2000, DiBella spoke by telephone with Hopkins and confirmed, in the presence of two attorneys representing Hopkins in the litigation with the

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[2] "Dx" refers to defendant's exhibits.

[3] The undercard is the fight immediately preceding the main event.

former promoter – Arnold Joseph and Scott Magargee – Hopkins's participation in the Jones/Hall undercard and $525,000 purse. (Trial Trs. 942-44, 1130 and 1213-14.) DiBella stated that, from this amount, he would be paid $50,000, and Hopkins did not object. (*Id.*) Hopkins's opponent in the HBO televised undercard was Syd Vanderpool. (App. 4.) The fight occurred on May 13 and Hopkins defeated Vanderpool. On the night of the fight, Hopkins and Joseph met with DiBella and presented him with a $50,000 check. (Trial Trs. 730 and 1218-19.) DiBella declined payment, stating that he had not yet worked out all of the details of his departure from HBO. (*Id.*, 963.)

After he left HBO, DiBella had no meaningful involvement with Hopkins until September 2000. By that time, Hopkins had independently negotiated an agreement for HBO to televise his December 2000 rematch with Antwon Echols.[4] (Dx 65.) After it signed Hopkins, HBO asked DiBella to package the undercard for this fight, and he thereafter assumed responsibility for this event. After Hopkins defeated Echols, DiBella negotiated a potential mega-fight with representatives of Roy Jones, but Hopkins rejected this fight. This infuriated DiBella who demanded that Hopkins pay him the $50,000 that remained outstanding from the Vanderpool fight. But for Don King, the notorious boxing promoter, subsequently approaching DiBella about a tournament to crown an undisputed[5]

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[4] There was significant interest in this rematch because the first fight was exciting and ended controversially.

[5] In boxing, there are four separate sanctioning bodies that recognize a champion in each weight class. Often, the sanctioning bodies recognize separate champions in a weight class. For instance, Hopkins won the IBF Championship in 1995 and retained that

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